

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

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	:
WAL-MART STORES, INC.,	:
	: Case No. 5:06-CV-05093-RTD
Plaintiff,	:
	:
v.	:
	:
NIU TECH L.L.C. d/b/a THEUSEFUL.COM,	:
EMARKETRESEARCHGROUP.COM,	:
EXCLUSIVEGIFTCARDS.COM,	:
ONLINEREWARDCENTER.COM,	:
ONLINEGIFTREWARDS.COM,	:
AMERICASTOPBRANDS.COM,	:
HOTGIFTZONE.COM, and	:
CONSUMERINCENTIVEPROMOTIONS.COM,	:
	:
Defendants.	:
-----	X

DECLARATION OF HOMER APPLEBY, ESQ.

Homer Appleby, Esq. declares to the best of his knowledge as follows:

1. This declaration is submitted in the above-captioned lawsuit brought by Wal-Mart Stores, Inc. ("Wal-Mart") against, *inter alia*, Niu Tech L.L.C. d/b/a TheUseful.com ("The Useful") (collectively, the "Parties"), Case No. 5:06-CV-05093-RTD.
2. I am Vice President and General Counsel of The Useful.
3. I submit this declaration in support of the Parties' Joint Motion respectfully requesting that the Consent Judgment and Permanent Injunction (the "Consent Judgment") be filed under court seal.

4. The Useful is an Internet marketing company that promotes products and/or services to the consuming public through third party affiliate networks and e-mail marketing companies.

5. After extensive discussions, which discussions included the exchange of the Parties' confidential and proprietary information, the Parties mutually agreed to amicably resolve the instant lawsuit.

6. The Parties entered into a stipulation annexed hereto as Exhibit "A" (the "Stipulation"), which Stipulation sets forth the agreement between the Parties to file the Consent Judgment under court seal in order that the Consent Judgment would not be subject to public disclosure.

7. If made generally available to the public, the Consent Judgment could place The Useful at a significant competitive disadvantage in the industry.

8. The public disclosure of the Consent Judgment would also embarrass The Useful in such a way that could undermine its ability to generate new business.

9. For example, public disclosure of the Consent Judgment would have a significant negative impact on The Useful and could result in negative publicity to The Useful. Unlike advertising on traditional mediums such as print and television, any negative publicity or embarrassment concerning The Useful, an Internet marketing company, could be broadly disseminated and published by The Useful's rivals. Moreover, The Useful could be subjected to instantaneous public reactions on numerous Internet blogs and chat rooms.


10. It would be virtually impossible for The Useful to adequately defend against such embarrassment, annoyance and competitive disadvantage.

11. Under these circumstances, entry of a protective order is a reasonable request that balances the Parties' needs to quickly resolve the litigation with The Useful's interest in maintaining the confidentiality of its business affairs.

12. Absent a sealing provision, information harmful to The Useful's business practices will become a matter of public record and immediately accessible.

13. Based on the foregoing, the Parties respectfully request that the Consent Judgment be filed under seal.

Dated: October 19, 2006


Homer Appleby, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WAL-MART STORES, INC.,

Plaintiff,

vs.

NIU TECH L.L.C.

D/B/A/ THEUSEFUL.COM,

EMARKETRESEARCHGROUP.COM

EXCLUSIVEGIFTCARDS.COM,

ONLINERewardCENTER.COM,

ONLINEGIFTREWARDS.COM,

AMERICASTOPBRANDS.COM,

HOTGIFTZONE.COM, and

CONSUMERINCENTIVEPROMOTIONS.COM,

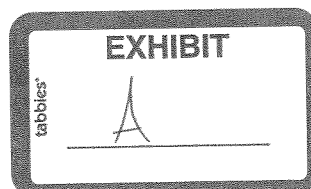
Defendant.

Case No. 5:06-cv-05093-RTD

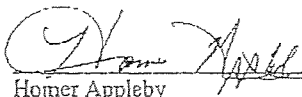
**STIPULATION TO FILE CONSENT JUDGMENT
AND PERMANENT INJUNCTION UNDER SEAL**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, counsel of record for plaintiff Wal-Mart Stores, Inc. and defendant Niu Tech L.L.C. d/b/a TheUseful.com (collectively, the "Parties"), that a Consent Judgment and Permanent Injunction, (the "Consent Judgment") in settlement of this action be filed under seal.

IT IS FURTHER HEREBY STIPULATED AND AGREED that the terms of the Consent Judgment shall be held in confidence unless required by compulsory process and access to the Consent Judgment shall be limited to the Court and the Parties, their attorneys, respective successors, agents and/or assigns.



Dated: October 19, 2006



Homer Appleby
Vice President and General Counsel
Niu Tech LLC
6001 Broken Sound Parkway
Boca Raton, FL 33487
(561) 939-6904



W. Asa Hutchinson III, Bar No. 2001115
Warner, Smith & Harris, PLC
J.B. Hunt NBC Tower
3333 Pinnacle Hills Parkway, Suite 220
Rogers, AR 72758
(479) 271-6041
Local Counsel for Plaintiff
Wal-Mart Stores, Inc.



Franklin B. Molin, Esq.
Neil P. Kearney, Esq.
Kirkpatrick & Lockhart
Nicholson Graham LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222
(412) 355-6500
Lead Counsel for Plaintiff
Wal-Mart Stores, Inc.